U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30967695

Date: AUG. 6, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner is an athlete who seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that the Petitioner had a major, internationally recognized award, nor did she demonstrate that she met at least three of the ten regulatory criteria. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-step analysis. In the first step, a petitioner can demonstrate international recognition of his or her achievements in the field

through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then move to the second step to consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115, 1121 (9th Cir. 2010) (discussing a two-step review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

The Petitioner is a "musher," the person who drives a team of dogs in a dogsledding competition. She has achieved top placements and finishes in various dogsledding categories.

A. One-time Achievement

In the initial filing before the Director, the Petitioner claimed [redacted] first place finishes is a one-time achievement of the sort that establishes eligibility for classification as an alien of extraordinary ability." She provided photographs of certificates and medals, as well as [redacted] rankings for the 2017 International Federation of Sleddog Sports (IFSS), results from other events such as the 2016–2017 [redacted] and letters from the IFSS president and vice president. [1]

After the Director notified the Petitioner the submitted material did not rise to the standard of a one-time achievement, she offered revised letters from those in the sport and media coverage of the competitions and championships. The Director concluded the awards were not major, internationally recognized awards. The Director acknowledged the evidence but found the Petitioner did not show that any of the media sources were at a level needed to show that her achievements were major, internationally recognized awards.

In the appeal, the Petitioner claims the Director added substantive requirements to the one-time achievement concept effectively eliminating dogsledding. On this issue, the Director's analysis described the context in which a person might demonstrate that an award that rises to a one-time achievement "that is, a major, international recognized award." 8 C.F.R. § 204.5(h)(3). The denial decision reflects:

> Given Congress's intent to restrict this category to "that small percentage of individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards.

[1] The IFSS is the primary dogsledding governing body worldwide.

> *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), reprinted in 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. The House Report specifically cited the Nobel Prize as an example of a one-time achievement; other examples which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and (most relevant for athletics) an Olympic Medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a major, internationally recognized award. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, reflects a familiar name to the public at large, and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the examples provided by Congress that the award must be global and internationally recognized in the field as one of the top awards.

We disagree with the Petitioner when she asserts the Director added substantive requirements in the examples associated with Nobel Laureat selections. In fact, the Director stated that "an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements." As a result, the Director was not mandating every one of those factors be satisfied, or any; only that they were salient illustrations stemming from the one example we have within the legislative record.

The Petitioner accuses the Director's approach of "effectively eliminating the field of sled dog racing (and a multitude of others) for which this means of qualification might occur." She continues discussing congress who, she asserts, did not elect to take an approach similar to the Director's, "likely because it would severely limit the range of fields in which and [sic] individual could qualify as an alien of extraordinary ability based on winning top awards in the field."

But the Petitioner does not grapple with congress' creation of a highly restrictive requirement for an award that a person generally will only receive once in their lifetime, and the example the legislators offered was the Nobel Prize; although not every award must equal that stature. So, it was congress that set the bar so high for a one-time achievement which could result in some fields being precluded from consideration under that provision. Congress further indicated foreign nationals "can also qualify on the basis of a career of acclaimed work in the field." H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. And in response, the agency promulgated the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x) that one may satisfy instead of a one-time achievement.

Next, the Petitioner states that USCIS is required to focus on her standing in the field and claims it is the regulation and the statute implementing such a necessity. But the brief doesn't cite to what part of the statute or the regulation mandates such a requirement. The Petitioner then states the Director instead focuses solely on the award's public notoriety and that nothing in the statute or regulations or the slight reference in the House Report supports that approach. The broader context for this requirement is the awareness of award itself, and that it be "a one-time achievement (that is, a major, international recognized award)." 8 C.F.R. § 204.5(h)(3). If the proper focus is not supposed to be on the award's notoriety, we are unsure what the Petitioner attempts to alter it to within these proceedings.

Not all sports or fields issue awards that would qualify as a one-time achievement. For example, even though the following sports have a global or international governing body and include competitors from around the world, their awards are not widely covered by major international media outlets: tchoukball; kabaddi; or korfball. Even though the dogsledding sport may be slightly more familiar to the public than these examples, after reviewing the Petitioner's claims and evidence, it appears the events and competitions the Petitioner claims do not issue awards that would qualify as a one-time achievement.

In situations where an award does not rise to a one-time achievement, a foreign national may still qualify for this highly restrictive immigrant classification by satisfying at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The one-time achievement requirement is arguably the most difficult provision to satisfy within the most restrictive employment-based visa category in U.S. immigration law. And simply because a major, internationally recognized award may not exist in a particular field or sport, we should not moderate the regulation's one-time achievement requirements. Doing so would undermine its apotheosis, reduce the honor and prestige associated with achieving such a distinguished accolade, and diminish the value for those who have truly earned it. Because the Petitioner appears unable to demonstrate any of her accomplishments qualify as a one-time achievement, this does not exempt her from meeting the high bar that 8 C.F.R. § 204.5(h)(3) sets.

The Petitioner next turns her focus to claim that neither Congress nor the regulation limited qualifying awards to those that are broadly familiar to the public. With this contention, we disagree. Again, the example in the House Report was the Nobel Prize; widely known to the public. And the Director offered additional examples of "the Pulitzer Prize, the Academy Award, and (most relevant for athletics) an Olympic Medal." A common thread for each being they are well-known in the public beyond the issuing entities and broader than the award recipients' field.

She argues that the proper question is what the award signifies regarding the individual's standing in the field relative to others, but she offers no support for this statement. In fact, comparing one's achievements to others in the field appears to be closer to what the regulation mandates that USCIS officers determine under the high salary or other significantly high remuneration criterion (8 C.F.R. § 204.5(h)(3)(ix); *see generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual), and under the commercial success criterion (8 C.F.R. § 204.5(h)(3)(x); *see generally* 6 *USCIS Policy Manual*, *supra*, F.2(B)(1). And comparing a petitioner's standing in the field relative to others may also occur within a final merits determination (*id.* at F.2(B)(2)).

Now in the appeal, the Petitioner states that she will "supplement the record here with additional media articles from various sources to reinforce that the IFSS championship events are well-recognized globally as the top international competitions in the field of sled dog racing." First and to reiterate, not all sports or fields will have awards recognizing one's efforts that rise to the level of a one-time achievement. Second, the Petitioner presents this statement without identifying what specific new evidence they are submitting, or more importantly how each form of evidence supports her claims of eligibility.

Third, the Petitioner was put on notice of an evidentiary requirement (by statute, regulation, form instructions, request for evidence (RFE), etc.) and was given a reasonable opportunity to provide the

evidence. Except in exigent circumstances and at USCIS discretion, any new evidence submitted on appeal pertaining to this requirement will not be considered, and the appeal on this issue will be adjudicated based on the evidence in the record as it existed before the Director. *See Matter of Furtado*, 28 I&N Dec. 794, 801–02 (BIA 2024) and *Matter of Izaguirre*, 27 I&N Dec. 67, 71 (BIA 2017) (citing *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988)); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). If the Petitioner had wanted the submitted evidence to be considered, she should have submitted the documents when prompted and in response to the Director's RFE. *Id.* Under the circumstances, it is unnecessary to consider the sufficiency of this new evidence submitted on appeal.

And even if we were to consider it, the majority of the material appears to be from an aggregating service that provides access to various resources, to include newspapers. She offered only that service's extraction of numerous articles without any supporting documentation regarding the entity that originally published each article. It is unclear what the Petitioner is asserting for this evidence other than to demonstrate that over the decades, sources from differing countries have published articles about dogsledding. This does not support her claims that her [redacted] finishes amount to a one-time achievement.

The remaining two forms of new evidence don't aid her in this effort either. The first is from an unidentified publisher titled [redacted] and the second form of evidence appears to be from the IFSS website, but the document does not contain a Uniform Resource Locator (URL) that reflects the actual source. At any rate, neither of these documents demonstrate her accomplishments equate to a one-time achievement.

The Petitioner's appeal brief twice mentions letters she submitted from those in the sport. Specifically, the Petitioner stated: "The primacy of IFSS championships in the field is confirmed by several experts in the field, whose opinions are contained in the record." She further stated: "The decision noted in passing but did not discuss, the multiple opinions of experts in the field regarding the significance of [the Petitioner's] awards." That comprises all the Petitioner's statements on appeal relating to letters in the record and she offers no insight on which letters we should evaluate, nor for what content.

In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Commensurate with that burden is the responsibility for explaining the significance of proffered evidence. *Repaka v. Beers*, 993 F. Supp. 2d 1214, 1219 (S.D. Cal. 2014). Filing parties should not submit large quantities of evidence without notifying the appellate body of the specific documentation that corroborates their claims within such large material, as doing so places an undue burden on the appellate body to search through the documentation without the aid of the filing party's knowledge. *Toquero v. INS*, 956 F.2d 193, 196 n.4 (9th Cir. 1992).

It is the filing party's responsibility to inform us of what errors the adjudicator committed and how their claims and evidence satisfy which eligibility requirements. *Id.*; *Spear Mktg., Inc. v. BancorpSouth Bank*, 791 F.3d 586, 599 (5th Cir. 2015); *S.E.C. v. Thomas*, 965 F.2d 825, 827 (10th Cir. 1992); *see also Harolds Stores, Inc. v. Dillard Dep't Stores, Inc.*, 82 F.3d 1533, 1540 n.3 (10th Cir. 1996) (concluding that where the evidence in the record is voluminous, it is imperative that an appellant provide specific references to record); *Uli v. Mukasey*, 533 F.3d 950, 957 (8th Cir. 2008)

(citing to *Matter of D-I-M-*, 24 I&N Dec. 448, 451 (BIA 2008) and noting when a case includes voluminous background materials, it is necessary to specifically identify the material one relies on to come to their conclusion).

But even if we made our way through the file reviewing each letter, we note that because we have already determined that the Petitioner has not described what evidence adequately supports the prospect that her accolades are "a one-time achievement (that is, a major, international recognized award)," letters from those in the industry will generally be insufficient to make such a demonstration as they will effectively contain claims that are not corroborated elsewhere in the record.

USCIS may—in its discretion—use statements from others in the field that were submitted as expert testimony as advisory statements. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting a petition is not presumptive evidence of eligibility. USCIS may give less weight to an opinion that is not corroborated, is not in accord with other information, or is in any way questionable. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact").[2] Because the Petitioner has failed to identify the letters or discuss their content she relies on, we will not address the letters in detail here.

For all of the reasons stated above, we conclude that the Petitioner has not received a one-time achievement that is, a major, internationally recognized award.

B. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). Before the Director, the Petitioner claimed she met three of the regulatory criteria. The Director decided that the Petitioner satisfied two of the criteria relating to lesser prizes or awards and performing in a leading or critical role, but that she had not satisfied the criteria associated with membership. On appeal, the Petitioner maintains that she meets the membership criterion. After reviewing all the evidence in the record, we agree with the Director on each of the criteria discussed above.

[2] We note that one element of the *V-K-* decision was overruled within *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015); however, this does not affect the portion of *V-K-* we cite to here. The *Z-Z-O-* decision clearly limited its adverse treatment of the *V-K-* decision to the issue of "an Immigration Judge's predictive findings of what may or may not occur in the future . . ." *Z-Z-O-*, 26 I&N Dec. at 590, which was related to the standard of review when evaluating an Immigration Judge's findings relating to an asylum applicant's reasonable fear claims. The *Z-Z-O-* decision made no mention of the evidentiary weight of expert testimony. The limit to the overruling nature of *Z-Z-O-* is illustrated within a footnote in which the BIA stated that other than the standard of review for predictive factual findings, it did not address and would not disturb other conclusions in the *V-K-* decision. *Z-Z-O-*, 26 I&N Dec. at 593 n.3. Consequently, the portion of the *V-K-* decision cited above remains effective.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii).

This criterion contains several evidentiary elements the Petitioner must satisfy. First, the Petitioner must demonstrate that she is a member of an association in her field. Second, the Petitioner must demonstrate both of the following: (1) the associations utilize nationally or internationally recognized experts to judge the achievements of prospective members to determine if the achievements are outstanding, and (2) the associations use this outstanding determination as a condition of eligibility for prospective membership.

The Petitioner claimed her membership as part of two dogsled teams. The Director determined that the Petitioner did not meet the requirements of this criterion. The Director only evaluated the United States Federation of Sleddog Sports (USFSS) team membership, but that may be due to the lack of clarity in the Petitioner's correspondence. Within the initial filing, she did not assert a claim under this criterion. And in a bulleted list responding to the Director's RFE, the cover letter only mentions she "was selected as a member of two associations (national sleddog racing teams)" without specifying which teams.

On appeal, the Petitioner discusses both the USFSS team and the Czech national dogsled team memberships. The only evidence the Petitioner offers relating to her place on the Czech national dogsledding team is the letter from Jiri Nesnera, the president of the "Czech association sleddog sports, z.s." The Petitioner did not submit evidence that this association and the Czech national dogsledding team are one and the same. This has an adverse effect on this evidence and it garners diminished evidentiary value.

Even setting that aside, this letter does not establish that the Petitioner has met all of this criterion's requirements. Specifically, Mr. Nesnera states the Petitioner "is a member of Czech association sleddog sports, z.s. and for her high performance results and experiences in sleddog sports she was 2 times joined to official Czech republic representants, and she had great results for our country." Although Mr. Nesnera indicates she was chosen to be a member of his association for her high performance, this does not mean that his association requires such high performances for all of its members. Nor does his letter establish his association uses that determination as a condition of eligibility for prospective membership.

Turning to the USFSS team, the evidence the Petitioner provided from USFSS contained two sections: one for eligibility criteria, and one for selection criteria. Because of the regulation's plain language regarding "membership in associations . . . which require outstanding achievements of their members," the eligibility criteria are the most important element because those specify who the USFSS will admit as members. Here, the eligibility criteria are:

- The competitor or applicant must be a U.S. citizen or permanent resident with an exception for anyone who doesn't fit those criteria requiring USFSS board approval;
- Applicants must have a valid IFSS driver identification number;
- The applicant must be a USFSS member in good standing with dues paid prior to filing the application;

- Preselected and non-preselected candidates must meet the application deadlines; and
- In addition to the preselected candidates, USFSS will select three athletes per class based on performance results.

Relating to the USFSS membership the Director stated:

> According to the summary of the USFSS Team USA Selection Rules, to be eligible a competitor must have a valid IFSS driver identification number, must be a USFSS members in good standing, and provide race results for the classes applied for. There is no requirements that a competitor or member have a significant or outstanding finish in a race, achieve a notable medal or any other evidence of outstanding achievement to qualify. While the petitioner may, or may not, have been chosen for her past successes, the eligibility requirements submitted with this petitioner do not require outstanding achievements of all members.

The Petitioner's appeal brief reflects she provided the team selection criteria and she claims that past performance, especially in IFSS [redacted] finishes are the primary factors in selection. But, in this particular case, because of the manner that USFSS organized its Official Selection Rules, the selection criteria are subordinate to the eligibility criteria. In other words, the eligibility criteria serve as the foundational requirements for team membership. These criteria are non-negotiable and must be met by all individuals seeking to join the team. In contrast, the selection criteria function as a secondary set of factors. They are applied only to candidates who have already satisfied the eligibility criteria and are used to determine the order of preference among qualified applicants.

Despite the Petitioner refuting the Director's analysis and determination, we agree with the Director's decision. On appeal, the Petitioner does not argue which of the bulleted eligibility criteria above demonstrates the USFSS team *requires* outstanding achievements simply to qualify for consideration as a team member. And she is incorrect in the assertion that past performance, especially in IFSS [redacted] finishes are the primary factors that determine who can be a team member. Those considerations fall under the subordinate area of what the USFSS characterizes as the selection criteria, but it is their eligibility criteria that determines who can be a team member, and those criteria do not mandate outstanding achievements.

"The petitioner must show that membership in the association requires outstanding achievements in the field for which classification is sought, as judged by recognized national or international experts." *See generally* 6 *USCIS Policy Manual*, *supra*, F.2(B)(1)). Based on the eligibility criteria, it is clear that the USFSS is not an association that holds such a requirement.

And within the letter from the USFSS' former president, Mike Marsch, he discusses membership in the organization stating that "[i]in order to be selected for Team USA, previous competitive racing success at the highest level is key." Mr. Marsch went on to list some of the subordinate selection criteria that we have concluded are not determinative of who the team will accept as members. He further states the USFSS "board did in fact approve [the Petitioner] as a member of Team USA based upon her high achievements in international competition." The test as stated in the regulation is not the reason any one individual was approved as a member. Instead, it is what the organization mandates

for all candidates at the membership level the Petitioner is asserting. As a result, we do not find Mr. Marsch's correspondence to be any more persuasive than the USFSS' eligibility criteria listed in its Official Selection Rules.

We therefore conclude that the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we do not need to provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119–20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward that goal. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown the significance of their work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A). Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and they are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.